

In the Matter of:)
)
Application for Certification) PMPD
San Francisco Electric) Docket No. 04-AFC-1
Reliability Project)
)

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

James D. Boyd, Presiding Member

HEARING OFFICER, ADVISORS PRESENT

Gary Fay, Hearing Officer

Peter Ward, Advisor

STAFF AND CONSULTANTS PRESENT

Dick Ratliff, Staff Counsel

William Pfanner, Project Manager

Tuan Ngo

APPLICANT

Jeanne Sol,, Deputy City Attorney
City and County of San Francisco

Karen Kubick, Project Manager
Randall Smith
San Francisco Public Utilities Commission

Steven Brock
PB Power, Inc.

INTERVENORS

Robert Sarvey

Joe Boss
Dogpatch Neighborhood Association
Potrero Boosters

ALSO PRESENT

Espanola Jackson

Dorothy Peterson, President
Shoreview Residents Association, Incorporated

ALSO PRESENT

Jose Gonzalves
Alpha and Omega Evangelistic Ministry

Francisco DaCosta, Executive Director
Environmental Justice Advocacy

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1 P R O C E E D I N G S

2 1:33 p.m.

3 PRESIDING MEMBER BOYD: Well, welcome to
4 this public hearing on the San Francisco Electric
5 Reliability project. I'm Jim Boyd, the Presiding
6 Commissioner on this siting case. Commissioner
7 Geesman, who is the Associate Member, is out of
8 the state on state business, so he won't be able
9 to join us today. My Advisor, Peter Ward, is on
10 the other side of Hearing Officer Fay.

11 With that, I think I'll just turn the
12 microphone over to Gary Fay, our Hearing Officer,
13 and let him begin the day's proceedings. Gary.

14 HEARING OFFICER FAY: Thank you,
15 Commissioner Boyd. I'd like to welcome everybody.
16 This is the Committee Conference to take comments
17 on the Presiding Member's Proposed Decision that
18 the Committee issued on August 25th.

19 By regulation there's a 30-day comment
20 period for the public. And that ends today,
21 September 25th. The parties were asked to file
22 their comments with the Commission and with each
23 other on September 20th.

24 And we did receive comments from the
25 staff of the Energy Commission, the applicant,

1 CARE and Bob Sarvey. In addition, today we
2 received a letter from the Potrero Boosters
3 Neighborhood Association and Dogpatch Neighborhood
4 Association.

5 The Committee envisions that after
6 hearing your comments today and taking into
7 account your written comments, the Committee will
8 discuss these and make whatever changes to the
9 PMPD that it believes are appropriate. And then
10 these will be reflected in an errata sheet that
11 will be presented to the Commission when the
12 Commission considers adoption of the final
13 decision in this case. And that's scheduled for a
14 special business meeting on October 3rd.

15 I'd like now to take introductions of
16 the parties who are here. We'll begin with the
17 applicant.

18 MS. SOL : Good afternoon, Commissioner.
19 This is Jean Sol, for the City and County of San
20 Francisco. I also have with me Karen Kubick and
21 Randall Smith from the San Francisco Public
22 Utilities Commission, representatives from CH2M
23 HILL and Sierra Research who undertook most of the
24 environmental analysis or supervised it. And a
25 representative from PB Power, so that if there are

1 any questions hopefully we can answer them.

2 HEARING OFFICER FAY: Thank you.

3 MR. RATLIFF: Good afternoon; I'm Dick
4 Ratliff, counsel for the staff. With me is Bill
5 Pfanner, the Project Manager. And we have with us
6 Dr. Alvin Greenberg, who did several of the
7 sections of the staff's environmental analysis.
8 And Tuan Ngo is also here to answer questions.

9 MR. SARVEY: Bob Sarvey, intervenor on
10 the project.

11 HEARING OFFICER FAY: All right. Any
12 other intervenors represented here? Yes, sir.

13 MR. BOSS: Joe Boss from Dogpatch/
14 Potrero.

15 HEARING OFFICER FAY: Could you come up
16 to be sure we get that on the transcript.

17 MR. BOSS: Hi, my name is Joe Boss; I'm
18 representing the Potrero Boosters and the Dogpatch
19 Neighborhood Associations.

20 HEARING OFFICER FAY: And I believe your
21 organizations are intervenors, isn't that correct?

22 MR. BOSS: That's correct.

23 HEARING OFFICER FAY: Thank you. Is any
24 representative from CARE here? Okay, I see no
25 indication. I do see some members of the public

1 here; and they've indicated that they would like
2 to make comments and we will have time reserved at
3 the end to take public comment.

4 The primary purpose of today's
5 conference is not to re-argue the substance of the
6 case. But, rather to comment upon the proposed
7 decision that the Committee has produced. And
8 where appropriate, to comment on those comments
9 filed by other parties, if you so choose.

10 We'll begin with a few questions from
11 the Committee, and handle this a little
12 informally. And then we'll go to each party and
13 let them make the comments that they think are
14 necessary.

15 I'd like to ask the staff, with regard
16 to facility design, table 2 in the PMPD, the
17 applicant suggested on page 18 of its comments
18 that there should be an adjustment to the table
19 contained in the PMPD. And based on revisions to
20 the project that were made, apparently after the
21 FSA was filed, or at least that table.

22 And I'd like to get some confirmation
23 from the staff that the staff did, in fact, review
24 the amended array of equipment as reflected in the
25 applicant's comments.

1 MR. PFANNER: Yes, that was reviewed by
2 staff and they had no comments.

3 HEARING OFFICER FAY: So the equipment
4 list that staff reviewed was the same one as
5 reflected in the applicant's comments filed
6 September 20?

7 MR. PFANNER: I believe so, yes.

8 HEARING OFFICER FAY: Okay, thank you.
9 Just wanted to confirm that. And turning to Mr.
10 Sarvey's comments, his comment number five on page
11 four of his filing, I'd like to get staff's
12 comment on that, regarding air quality table 1.
13 He notes in air quality table 1 on page 102 of the
14 PMPD should include the new federal eight-hour
15 ozone standard. BAAQMD is not in attainment of
16 the standard. Does staff concur with that?

17 MR. RATLIFF: I believe that's correct,
18 but I would defer to Mr. Ngo, who is our witness .

19 HEARING OFFICER FAY: Can we have Mr.
20 Ngo come up?

21 MR. NGO: Good afternoon, Commissioners,
22 my name is Tuan Ngo, spelled, T-u-a-n, last name,
23 N-g-o.

24 Can I ask what is the question, again?

25 HEARING OFFICER FAY: Okay. On page 4

1 of Mr. Sarvey's comments, and perhaps counsel can
2 provide you a copy. It's comment number five.
3 Why don't you take a second and read that and
4 compare it to what is on page 102 of the PMPD.
5 Tell us if you think Mr. Sarvey's correct.

6 MR. NGO: Mr. Sarvey is correct.

7 HEARING OFFICER FAY: Okay. All right.

8 Thank you. Now, Mr. Sarvey mentioned in his
9 comments on page 6 that the PMPD was incorrect
10 regarding the SEIR for the waterfront project.
11 And we reviewed that, and reviewing the transcript
12 we found that Mr. Sarvey was asked to provide a
13 copy of that and at that time indicated that he
14 was providing a copy to the applicant. And he
15 suggested that he provide a copy to me personally.
16 I have no recollection of that, and I did not have
17 that in my materials when I returned from the
18 hearing.

19 So, I just have to disagree with his
20 statement on that. However, we assume that he is
21 correct in providing the date the dockets
22 received, later received a copy of the waterfront
23 plan. However, for some reason that was not
24 available to staff. And it was not available to
25 our efforts, either, from the docket office.

1 In any case, staff did object to taking
2 notice of that document, and the Committee has not
3 taken official notice of the document. However,
4 it is marked for identification as exhibit 92(b).

5 So the footnote that reference that has
6 been revised to reflect the accurate facts, but it
7 did not change our determination on taking notice
8 of that document.

9 Is there anything further on that, Mr.
10 Sarvey?

11 MR. SARVEY: yeah, I have a witness here
12 that saw me hand you the document at the hearing.
13 And if you'd like to hear from them I'd be glad to
14 provide them.

15 HEARING OFFICER FAY: Okay.

16 MR. SARVEY: But I guess I fail to
17 understand why the Committee has changed its
18 position on taking administrative notice of the
19 southern waterfront EIR.

20 HEARING OFFICER FAY: It has not changed
21 its position. It did not -- oh, I see what you're
22 referring to. Yes, the tentative exhibit list did
23 refer to it as having taking administrative notice
24 of, and that was by way of putting out the word
25 that that was something the Committee was

1 considering.

2 Staff then objected to that. And based
3 on the staff's objection, the Committee withdrew
4 the notice. And so has not taken administrative
5 notice of the document. It was because of the
6 objection.

7 MR. SARVEY: Can we discuss staff's
8 objection here? Because I think it's invalid.

9 HEARING OFFICER FAY: Well, it's frankly
10 a little late for that. We've made the
11 determination. And in light of the difficulty in
12 availability of the document we thought that
13 staff's objection was reasonable. And so, there's
14 not been administrative notice taken of the
15 document.

16 In any case, the decision did note that
17 the document is at least five years old, based on
18 the date. And there's some evidence that it's
19 seven years old. And probably is not as current
20 as the evidence we relied on elsewhere in the
21 record.

22 MR. RATLIFF: Mr. Fay, if I may. Staff,
23 I believe it's more correct to say the staff did
24 not object to the taking of administrative notice
25 of the SEIR. What we said in our brief is that

1 the Commission may not take administrative notice
2 of the SEIR under California state law. Only
3 certain things may be administratively noticed,
4 and the SEIR is not one of them. And the brief
5 set forth the law on that point.

6 HEARING OFFICER FAY: Thank you for that
7 clarification.

8 Then we'd also like the applicant to
9 respond to Mr. Sarvey's comment number 11; that's
10 on page 7 of his comments, or 8. Regarding the
11 use of ERCs to offset nitrogen deposition.

12 Ms. Sol,, do you have someone with you
13 who's qualified to comment on that?

14 MS. SOL : I do, Your Honor. I was
15 going to address the issue in my comments. If
16 after I've addressed it, it hasn't fully covered
17 what you wanted to hear I have with me Jeff Adkins
18 and Tom Andrews from Sierra Research. Mr.
19 Rubenstein is not available today. But they
20 should be able to answer questions, as well.

21 HEARING OFFICER FAY: Okay. Then we'll
22 just wait to hear from you on that.

23 And then as the applicant noted in its
24 comments, the Committee raised questions about
25 condition of certification AQSC-5 discussed on

1 page 107 and 108 of the PMPD. That has to do with
2 an exemption for disadvantaged contractors or
3 operators of equipment that would exempt them from
4 an air quality requirement.

5 The Committee was concerned that this
6 subjects the public to an air quality compromise
7 that did not appear to be justified. And the
8 Committee was inclined to eliminate that change.
9 The applicant has opposed that. I hope -- do you
10 plan to address that, as well?

11 MS. SOL : Yes, Your Honor.

12 HEARING OFFICER FAY: Okay. And then
13 we'd like to hear from the applicant on the extent
14 to which they feel the Committee has not
15 adequately applauded the environmental justice
16 efforts that the City has undertaken in connection
17 with the project.

18 So, those are the comments from the
19 Committee. And, Mr. Sarvey, I'm not cutting you
20 off from further comment. I want to be sure we
21 got to that comment. But if you have something
22 further when we get to you, that's fine.

23 MR. SARVEY: Thank you.

24 HEARING OFFICER FAY: If it's on that
25 matter, or anything else.

1 So what I'd like to do now is begin with
2 the applicant and let them make whatever comments
3 they feel appropriate. And hopefully reflect on
4 other parties' comments if they have a particular
5 dispute with them.

6 By the way, the fact that I've just now
7 not reflected on some of the comments the parties
8 have made just means I didn't have a question
9 about them. It doesn't mean we disagreed with
10 them in any way at all. Most of the comments
11 were, I thought, quite constructive. And it helps
12 us get the decision as accurate as we can, in
13 light of the record of evidence.

14 So, Ms. Sol,, go ahead.

15 MS. SOL : Thank you, Your Honor. Good
16 afternoon, Commissioner, Your Honor, parties,
17 members of the public. I appreciate the
18 opportunity to be here and offer the City's
19 comments on the Presiding Member's Proposed
20 Decision.

21 We submitted written comments on
22 Wednesday, September 20th. I'm not going to
23 address all of those comments now, but I'm going
24 to address some of the highlights and try to
25 respond to some of the comments that Mr. Sarvey

1 and CARE raised in their comments.

2 We did not have any comments on the
3 comments of staff.

4 Just by way of introduction I think it's
5 important that the City is here proposing to
6 construct the San Francisco Electric Reliability
7 project as part of a broad ongoing effort to
8 facilitate the closure of all dirty inCity
9 generation.

10 The City has undertaken this effort in
11 concert with community members and in response to
12 community concerns. And we're very happy that
13 this year we've achieved a significant milestone
14 with the closure of the Hunter's Point Power Plant
15 once the Jefferson-Martin line was energized.

16 And so our efforts are turning to
17 achieving the closure of the Potrero Power Plant.
18 And we view the SFERP as one of the key components
19 to achieving that objective.

20 We support the PMPD, which we think
21 accurately summarizes a pretty extensive
22 evidentiary record. And it concludes, we think
23 appropriately, based on that record that the SFERP
24 will comply with all applicable laws, ordinances,
25 regulations and standards; and will not result in

1 significant adverse impacts.

2 We have only one substantive
3 disagreement with the PMPD, and that relates to
4 the environmental justice analysis. We agree with
5 the Committee's conclusion that this project will
6 not adversely impact environmental justice, but we
7 come to that conclusion along a different line of
8 analysis.

9 We offered some additional comments
10 because we think that because of the broad
11 interest that this project has for a broad
12 community, it's very important that the basis of
13 the Commission's analysis be laid out very clearly
14 and capable of being understood by the broader
15 public.

16 And so we've offered some comments that
17 we think go to just adding some detail to make the
18 Committee's understanding very clear. And then we
19 have a number of very minor corrections that I'm
20 not going to talk about here. If anybody had any
21 questions about those, I'd be happy to address
22 them.

23 So, to start off with environmental
24 justice, the bottomline is that the City thinks
25 that it's central to an environmental justice

1 analysis that this power plant is part of the
2 program to replace the reliability basis of the
3 Potrero Power Plant.

4 The City would have very serious
5 environmental justice concerns and has expressed
6 serious environmental justice concerns in the
7 past, as to any project that were proposed to be
8 built in southern San Francisco -- southeast San
9 Francisco that did not provide the reliability
10 basis to close down the Potrero Power Plant.

11 The City has recognized that this is a
12 disadvantaged community of color with unduly high
13 rates of serious respiratory diseases. That has
14 already been impacted by industrial --
15 disproportionately impacts by industrial
16 development, including electric generation.

17 And so in our view putting a power plant
18 in southeast San Francisco has to be part of a
19 program to achieve the closure of the Potrero
20 Power Plant.

21 Now, the City recognizes that the record
22 in this case does not -- we don't have evidence of
23 an agreement with Mirant that the plant is going
24 to shut down. We obviously wish we did, and we
25 think that it would make the EJ analysis all the

1 stronger if we did.

2 But we think that you can still come to
3 a conclusion that this project supports
4 environmental justice because of some of the
5 factors that contribute towards a conclusion that
6 this is part of a very serious plan to achieve the
7 closure of the Potrero Power Plant.

8 The first thing is that the SFERP is a
9 key component to eliminate the reliability basis
10 for the Potrero Power Plant. I think in this case
11 perhaps we've confused to some extent the closure
12 of the power plant with the replacement of the
13 reliability need for the power plant.

14 The SFERP, with a project that we are
15 pursuing aggressively at the airport, will replace
16 the reliability need for the Potrero Power Plant.
17 We think that's key because whatever additional
18 steps are required it is virtually impossible to
19 close down the Potrero Power Plant until we've
20 replaced the reliability need.

21 We'd have strong opposition from the ISO
22 if we tried to do that. We'd have strong
23 opposition, no doubt, from other policymakers.
24 And, frankly, the City would have -- it would be
25 difficult for the City to be promoting something

1 that would result in bad reliability for the City.

2 So, that is a key objective in and of
3 itself. We recognize that there are a few
4 additional steps that need to be taken. But,
5 frankly, replacing the generation, the inCity
6 generation, is probably the most difficult
7 component of replacing the reliability need for
8 Potrero because that is a component that is so
9 controversial.

10 And so we think that factor, the fact
11 that the SFERP is a key component of the program
12 to replace the reliability need for the Potrero
13 Power Plant is key.

14 We think it's also important that the
15 City has a plan to achieve closure. We're not
16 just going to go ahead and replace the reliability
17 need and, you know, rest on our laurels. The City
18 has been pursuing other avenues to achieve that
19 closure. We've been in discussions with Mirant.
20 And we're insisting on aggressive enforcement of
21 other environmental rules to make sure that that
22 power plant closes down.

23 We think we achieved a pretty
24 significant victory when mostly through the
25 efforts of the City and the community, which was a

1 key partner in this effort, the Regional Water
2 Quality Board was persuaded to limit the discharge
3 permit for the plant to two and a half years
4 unless Mirant can show that there would be no
5 significant impacts to the Bay from once-through
6 cooling after that. We don't really think that
7 that's a finding that they're going to be able to
8 make.

9 But, bottomline is the City is just not
10 going to rest until it achieves the closure of the
11 power plant. And it has a plan to do that.

12 Third component that we think is very
13 important is the City is a public entity. We're
14 not talking about a private developer here who
15 ultimately is going to be looking at the
16 bottomline. We're talking about a City that's
17 answerable to its citizens.

18 And I have no doubt that the citizens
19 will not let us rest until we achieve closure of
20 the Potrero Power Plant. They've been key to
21 keeping the City interested in this effort.
22 They've been key to the City's efforts to achieve
23 the closure of the Hunter's Point Power Plant. No
24 doubt they wish we were able to, we had done more
25 by now, and could move faster. But the point is

1 they are not going to let us rest until we achieve
2 that objective. And I think that's an important
3 thing to consider, as well.

4 And then the final important point is
5 that the SFERP is, in fact, cleaner than the
6 Potrero 3 Unit. Mr. Sarvey has attempted to show
7 that that's not the case. He bases his argument
8 on one table which, itself, is footnoted. It
9 makes it clear that there's a comparison of that
10 table of apples to oranges. One of them is the
11 actual particulates emission rate of Potrero 3
12 versus the permitted emission rate for
13 particulates for the SFERP.

14 But Mr. Rubenstein stated clearly on the
15 record that it's his expectation that when you
16 compare apples to apples the SFERP will be similar
17 in terms of rate, if not better. And that
18 certainly when you look at annual tonnage, it will
19 be lower because it's a smaller plant and it's
20 expected to run less.

21 The other thing that's important is that
22 the SFERP is much cleaner in terms of NOx
23 emissions and other particulate precursors.

24 So, I think when you look at the broader
25 picture the SFERP is cleaner. Otherwise there'd

1 be no reason to pursue this.

2 Mr. Sarvey and CARE have raised some
3 questions about how you can give importance to the
4 SFERP given that there are additional steps needed
5 to both replace the reliability need for Potrero,
6 and also to achieve the closure of the Potrero
7 Power Plant.

8 As I indicated, this is a key step to
9 closing the Potrero Power Plant. If, at every
10 step along the way, we have to show that all the
11 other steps are in place, it's very difficult to
12 make progress.

13 And the same can be said about the need
14 for an additional piece at the airport. We
15 recognize that that's an additional piece. We're
16 moving forward with it. And we think that, you
17 know, if you can't permit one piece because it's
18 only one piece, we'll just never be able to make
19 progress here.

20 So, we don't think those are persuasive
21 arguments. The bottomline is the hard nut to
22 crack about replacing the reliability need for the
23 Potrero Power Plant is replacing the inCity
24 generation. And that's what this project is
25 intended to do. And if this project doesn't go

1 forward, the closure of Potrero Power Plant
2 becomes a much more remote possibility.

3 I'm not going to say it becomes
4 impossible, because the City isn't going to rest
5 until it achieves that objective. But, you know,
6 we have a plan now; we can do it; we can do it
7 within a reasonable period of time. And we'd like
8 to.

9 Our opening comments also address the
10 importance of being clear about the facility's
11 objective for the project under CEQA. I'm not
12 going to go into that in detail now. I think the
13 proposed decision acknowledges that the City's
14 objective is to replace the reliability need.

15 But there's some language there that
16 might confuse people. And we think that it's
17 important to be clear about this objective,
18 because under CEQA it's the City's objectives that
19 become important for purposes of analyzing
20 alternatives and the no-project alternative.

21 And so we think it's important to be
22 clear that this is what we're trying to achieve.
23 And this is the reason why some of the other
24 alternatives don't work.

25 We also talk about some of the -- you

1 know, some of the language might be misinterpreted
2 in terms of the ISO's testimony about the need for
3 generation north of Martin. Again, this is an
4 issue that is of extreme interest to many people
5 in the community.

6 I think the ISO was very clear that you
7 need inCity generation. But there was no
8 implication that we need additional generation in
9 the City. It's just that if we want to close down
10 Potrero, we need to have some inCity generation.
11 And in this case what we're proposing is the
12 SFERP.

13 And we think it's important to clarify
14 that so that people understand that that's what
15 the ISO said. And there isn't a concern created
16 that we're just adding generation in the City,
17 because that's not my understanding of what the
18 ISO is asking for.

19 Let me turn now briefly to discuss the
20 tier 2 standards, and disadvantaged businesses.
21 The PMPD questioned why we need this exemption.
22 And the reason why we would like to have this
23 exemption is because it's one of the City's
24 objectives in going forward with this project to
25 maximize the avenues for members of the community

1 to participate in the construction, and thus
2 directly benefit.

3 Again, that relates to the environmental
4 justice consideration. If this project is going
5 to be going on in the community, we want to give
6 community members avenues to participate directly
7 and benefit.

8 We're concerned that the application of
9 the tier 2 standards makes it less possible for
10 local people to participate. The tier 2 standards
11 are more likely to be met by newer equipment.
12 Some of the members in the community might not be
13 able to afford this new equipment.

14 And so we think that when you balance
15 the benefit of on the one side additional diesel
16 reductions, but on the other side having members
17 of the public able to participate, we come down on
18 having members of the public participate because
19 we already assessed the impacts without that tier
20 2 standard and were able to show that they're
21 below the levels of concern of this Commission and
22 the Bay Area Air Quality Management District.

23 So, since we're already there, while we
24 definitely in most circumstances support any
25 measure to maximize reductions in diesel

1 emissions, in this case we think that if you do
2 the balancing act we really think you should come
3 down on giving an opportunity for members of the
4 community to participate in this project.

5 We did, after the PMPD came out, go and
6 survey some of the members of the community to try
7 to see if this is just something that we thought
8 up and is not a problem. And what we found is
9 that indeed it would be something of an impediment
10 for members of the community to participate. So
11 we think that the exception is appropriate in
12 these circumstances.

13 HEARING OFFICER FAY: Let me ask you
14 while we're on that, is there no other mechanism
15 that the City could use to facilitate
16 participation of disadvantages contractors and
17 operators that would not compromise the air
18 quality controls that we're trying to impose on
19 the site to protect that very disadvantaged
20 community?

21 MS. SOL : Again, the City has accepted
22 every other proposal by staff to minimize
23 reductions. We have proposed a good number,
24 ourselves. We've accepted all the additional
25 recommendations by staff.

1 We'll do everything we can, but in the
2 end it comes down to what equipment you can use.
3 And some of the construction work that this would
4 affect is the precise type of work that we've been
5 hoping we could get members of the community
6 involved.

7 Perhaps I could have Karen Kubick come
8 up and talk about that a little bit more.

9 MS. KUBICK: The way we are structuring
10 this job we intend to focus the work that our
11 disadvantaged businesses and enterprises would be
12 working on would be the laterals, the linears, the
13 paving, the roadwork. And what we found to be the
14 case is any equipment past a three-year age would,
15 you know, disqualify it from meeting the
16 requirements of the tier two.

17 So, what I did with my construction
18 management team was did some calling to our local
19 contractors, folks that would be qualified, that
20 are in the neighborhood, that have had experience
21 and are certified with the City as local
22 businesses. And found that their equipment
23 typically is well over three years old; it's
24 typically five to ten, and in some cases they're
25 using equipment that's more than ten years old.

1 So we discussed that with our air folks,
2 and found that for tier one equipment could be as
3 old as 1996; but prior to 1996 it would actually
4 fall to a tier zero.

5 So, we're hoping we can move this
6 forward as a, you know, case-by-case analysis.
7 We're anticipating this job's going to be run with
8 a prime contractor coming in, doing the balance of
9 plant, everything within the fenceline. And that
10 we're going to subcontract out the work that is
11 outside the fenceline. And that this would be a
12 huge impediment and not allow some of our local
13 contractors to be able to participate. And we
14 would be unable to meet the 6 percent local
15 hiring.

16 PRESIDING MEMBER BOYD: There's no
17 program the City could engage in with regard to
18 these people getting access even on a rental basis
19 of cleaner equipment? Because I will say we are
20 struggling with and troubled by the protection of
21 the community that has been a subject of extreme
22 interest, but in this particular case you're
23 willing to trade it off.

24 And I don't know if the members of the
25 community are willing to trade it off or not. You

1 say they are in order to advantage members of the
2 community having access to some of the work.

3 I would think the City might find other
4 avenues to help those people get access to the
5 work, including ways of providing that they could
6 rent equipment that does meet the standards.

7 MS. KUBICK: I actually can't comment on
8 what the age of a rental fleet might be, and I
9 wonder --

10 HEARING OFFICER FAY: Well, you see our
11 concern. We're talking about a cost one way or
12 the other. It's either a cost apparently to the
13 City to make some adjustments so there's more
14 access for disadvantaged contractors and
15 operators. Or a cost to the local breathers
16 because of the increased emissions that would come
17 from the older equipment.

18 MS. SOL : Well, Your Honor, again, I
19 mean we looked at it and frankly I don't know that
20 we've gone back and talked to the community
21 specifically about this point.

22 We were trying to maximize the ability
23 of the community to participate. We thought that
24 in this case it makes sense because even without
25 considering that specific requirement we were

1 under the standards; and because the diesel
2 impacts are, by and large, localized, and it's a
3 construction impact, so it's a limited period of
4 time.

5 But we certainly understand that it's a
6 balancing act. We don't have a magic solution.
7 However the Commission comes out we'll try to
8 manage it. And we will maintain our commitment to
9 try to incorporate members of the local community
10 into the construction.

11 It's just we went back and actually
12 looked at whether this would make a difference,
13 and it would. But we'll work around whatever the
14 Commission decides in this case.

15 HEARING OFFICER FAY: Let me ask a few
16 more questions. Ms. Kubick, you said that it's
17 primarily the installation of the linear
18 facilities, as opposed to the part of the project
19 within the fenceline, is that correct?

20 MS. KUBICK: Yes, that's correct. And
21 things like graders and backhoes, this type of
22 equipment, exceeds the age to qualify for the tier
23 two requirement.

24 We also looked into drill rigs and
25 concrete pumps, and those are sometimes in the

1 range of 20 to 30 years old. They're rebuilt,
2 they're worked on. Contractors aren't purchasing,
3 necessarily, a new fleet every year to stay in
4 compliance. They buy equipment, and they focus
5 more on things like the DMV certification, not
6 necessarily these types of additional
7 requirements.

8 HEARING OFFICER FAY: Mr. Ngo, have you
9 had experience with this kind of situation on any
10 previous cases where we're trying to balance the
11 economic needs of the community against the air
12 quality impacts during construction?

13 MR. NGO: Mr. Fay, about a year and a
14 half ago the City come and asked that to consider
15 this condition. And what I did, I come back and I
16 look at the -- I did go to San Francisco area to
17 look at the construction site. I think it was
18 Mission something, I forgot what it was.

19 But from all the equipment I see there,
20 the ones that are doing the most pollute equipment
21 was not this equipment that we're talking about
22 for the small business advantage.

23 So what I did I come back, I look at the
24 number from the City. They are talking about 6
25 percent of the workforce over in the area. And I

1 look at the equipment involved and I evaluate what
2 are the approximate -- are we talking about are in
3 that construction period, are we talking about.

4 My estimate come out to about less than
5 1 percent of the total emission from diesel engine
6 for this small business -- disadvantaged business
7 enterprise.

8 I try to get some information from the
9 San Francisco Urban -- Commission about the
10 business, also. And then they come up, they tell
11 me about only 15 businesses that are qualify. And
12 I asked them to give me the name, but I never got
13 any of that information from them after that.

14 So, my assumption is that I know that
15 this condition was sort of like not for air
16 quality, given the fact that the emission is
17 small; it is not -- again, it's a balancing act.
18 And there will be no significant loss of air
19 quality benefit because of the condition. And
20 therefore, I go ahead and approve this condition.

21 HEARING OFFICER FAY: Would it severely
22 restrict what the City's trying to do to limit it
23 to just offsite linear construction, as opposed to
24 any construction on the project?

25 MR. NGO: May I suggest that if we

1 really want to do that, may add that this
2 equipment to be operated within the fenceline of
3 the construction site. That will give you a great
4 benefit and even reduce the emission much much
5 lower.

6 HEARING OFFICER FAY: I understand that,
7 but actually what applicant said is that the
8 greatest likelihood of using these contractors
9 would be outside the fenceline, working on the
10 linear facilities. So, it seems to be that that's
11 where they anticipate using these people the most.

12 MS. KUBICK: We're just whispering about
13 it for a second.

14 HEARING OFFICER FAY: We can take a
15 moment. See if we can get some ideas on this.

16 (Pause.)

17 MS. KUBICK: Our worry at this point is
18 because we have the job out to bid, essentially,
19 so we'll be getting a package back in November
20 17th. And we don't want to eliminate any avenue
21 to be able to get disadvantages businesses to be
22 part of the package. Because it's difficult; it's
23 going to be a large, you know, prime contractor,
24 there might be some earth-moving and excavation
25 and grading. And some other work, putting in

1 piles, that might be able to involve our local
2 contractors, as well.

3 And that's the dilemma. That equipment
4 would also fall into that. But, you're right,
5 it's 6 percent of the total job workforce. But I
6 wouldn't want to limit it to just the linears.

7 HEARING OFFICER FAY: When you say 6
8 percent, that's the goal?

9 MS. KUBICK: That's the goal, yeah.

10 HEARING OFFICER FAY: For disadvantaged
11 contractors and operators.

12 MS. KUBICK: Yes.

13 PRESIDING MEMBER BOYD: Do you have an
14 idea of what percentage of the work would be
15 inside the fenceline versus outside? Since you
16 just didn't want to be pinned down to --

17 MS. KUBICK: Yeah, yeah, --

18 PRESIDING MEMBER BOYD: -- exclusively
19 outside the fenceline linears.

20 MS. KUBICK: In terms of time it's --
21 Steve, why don't you -- be better at this.

22 MR. BROCK: Yeah, I'm Steve Brock with
23 PB Power. You know, I would say probably less
24 than 6 percent of the total contract, 6 to 8
25 percent of the total contract price will be

1 offsite linears. Just kind of remembering the
2 magnitude of some of those.

3 PRESIDING MEMBER BOYD: In terms of the
4 applicability of these provisions for
5 disadvantaged members of the business community,
6 what percent of the work that they might engage in
7 would be inside versus outside the fenceline.

8 MR. BROCK: Yeah, it's probably another
9 4 to 5 percent. Because, once again, it's the
10 civil aspect of the construction, moving dirt or
11 concrete, forms of those natures, which are
12 actually going to use the motorized equipment
13 which would not meet the tier two requirements.

14 In coming up with the numbers I was
15 involved in helping bring up the numbers and
16 seeing if the contractors could meet the 6
17 percent. And it was our feeling at the time that
18 this was a fairly aggressive type of number to
19 come up with for the project. That the contractor
20 was going to be really pushed -- the prime
21 contractor would be pushed to get 6 percent of the
22 work into the DBE requirements, because so little
23 of the overall project is involved with this
24 earth-moving or pumping concrete or things of that
25 nature.

1 As was mentioned earlier, all of the
2 offroad vehicles -- I'm sorry, all of the highway
3 vehicles have to meet the DBE, the DB -- MDV
4 requirements, so those are already taken care of
5 as far as the emissions go. And it's only the
6 nonhighway stationary type of equipment that, you
7 know, we're talking about here.

8 HEARING OFFICER FAY: And Mr. Ngo, you
9 said you estimated that that would be about 1
10 percent of the construction emissions?

11 MR. NGO: That's correct.

12 HEARING OFFICER FAY: Well, there may be
13 some comments from other members of the community
14 later on this. Does anybody else have anything
15 else to offer? We don't want to bog down too
16 much, and want to give everybody a chance to talk.

17 All right, I --

18 PRESIDING MEMBER BOYD: We interrupted
19 Ms. Sol, in the middle of her presentation.

20 HEARING OFFICER FAY: Yeah. Why don't
21 you make a note and bring this up when we --

22 MR. SARVEY: I can take like five
23 seconds and get it over with.

24 HEARING OFFICER FAY: Okay, sure.

25 MR. SARVEY: Originally I supported the

1 applicant's position here. I'm a little concerned
2 about it. Most of the construction occurring
3 outside the fenceline, so that sort of took my
4 total support for the condition away.

5 But I still have some sympathy for where
6 they're at.

7 HEARING OFFICER FAY: And just to
8 clarify, Mr. Ngo, the comment you made about it
9 being preferable if you were going to condition
10 it, to keep the older equipment inside the
11 fenceline, is that because the work on the linears
12 is closer to the neighborhoods, whereas work
13 onsite is more removed from residential people, is
14 that correct?

15 MR. NGO: The reason why I suggest these
16 equipment to be operated within the fenceline,
17 because we had condition to require the City to
18 erect a solid barrier. So whatever dust generate,
19 or diesel emission generate from the inside the
20 fenceline will stay there; most of it will stay
21 there. So that's about the only reason.

22 HEARING OFFICER FAY: I see, okay. All
23 right, thank you. Ms. Sol,, go ahead then.

24 MS. SOL : Thank you, Your Honor. So
25 I'm going to move on to talk about the nitrogen

1 deposition on San Bruno Mountain. We believe that
2 PMPD would benefit for some additional detail
3 regarding nitrogen deposition and how the
4 Commission came to the conclusion that there isn't
5 a significant impact there.

6 I'd like to start out by stressing that
7 the impacts of the plant alone are, I think,
8 indisputably insignificant. I think they're
9 .0059, whatever the unit is; and the level of
10 significance is between 5 and 6.

11 So this isn't an individual problem.
12 This is a potential cumulative impacts problem.
13 In the context of cumulative impacts problem, CEQA
14 guidelines are clear that the City can rely on its
15 compliance with a broader program to show that its
16 contribution is cumulatively not considerable.
17 And we believe that that's what we've done.

18 We've shown two things in this case.
19 First of all, we've shown that we are complying
20 with the Bay Area Air Quality Management
21 District's program to address NOx and ozone, which
22 are the source of the cumulative program.

23 And second of all, we've shown that that
24 program is working with regards to impacts from
25 inCity generation and San Bruno Mountain. I think

1 it's important to understand that it's inCity
2 generation that has the potential to impact San
3 Bruno Mountain.

4 Mr. Rubenstein testified on the stand
5 that other power plants would be too far away to
6 impact San Bruno Mountain. So what we've shown
7 here is regional program, we're participating,
8 it's working with regards to San Bruno Mountain
9 specifically.

10 The reductions that are being obtained
11 from inCity generation are considerable. Just
12 with the closure of the Hunter's Point Power Plant
13 and the retrofit of the Potrero Power Plant with
14 an SCR, 85.8 tons of nitrogen emissions have been
15 reduced.

16 In contrast, the SFERP would add 44.4
17 tons and 14.5 of those tons are offset by the
18 City's own NOx emissions. Thus the reductions
19 that we've already achieved are just about three
20 times what the SFERP would add.

21 And if, as the City plans, we achieve the
22 closure of the Potrero Power Plant, or let me say
23 when, because we will achieve that goal, the
24 reductions will total 169 tons per year.

25 Now, Mr. Sarvey has leveled a number of

1 critiques against this analysis. For one thing he
2 says that you can't use ERCs, and particularly
3 older ERCs, to address this problem. Mr.
4 Rubenstein, I think, spent a lot of time talking
5 about how, first of all, the use of ERCs is
6 appropriate. And second of all, with the use of
7 older ERCs have done is that there's been
8 reductions for these past 20 years that have not
9 been considered in the Bay Area Air Quality
10 Management plans, and therefore additional
11 reductions were obtained.

12 And so, if anything, we've gotten an
13 additional benefit from the fact that these ERCs
14 are older. And I think that this Commission has a
15 history of accepting ERCs as appropriate
16 mitigation.

17 Second, Mr. Sarvey argues that we cannot
18 take credit for reductions from other inCity
19 generation. And, again, we think that that
20 ignores the fact that we're talking about a
21 cumulative impact here. And so you can look more
22 broadly at the program and see what's happening
23 with regards to this regional program to deal with
24 the problem. Is it or isn't it working?

25 Mr. Sarvey argues that the NOx ozone

1 program that we're participating in was not
2 specifically designed to address nitrogen
3 deposition in San Bruno Mountain, and therefore we
4 can't rely on it. But that's really taking much
5 too narrow of a view. Again, it is the NOx ozone,
6 the regional NOx ozone problem that creates the
7 nitrogen deposition problem on San Bruno Mountain.
8 The SFERP, alone, is not causing the problem.

9 And so we think that in that context
10 it's appropriate for our participation in the
11 broader program, which is working with regards to
12 San Bruno Mountain, our participation in that
13 program shows that our impact, we've taken care of
14 our impact and reduced it to less than
15 cumulatively considerable.

16 Again, we think it's particularly apt
17 because we've shown that the program is working
18 with regards to San Bruno Mountain.

19 I'd like to address a couple of CARE's
20 concerns, as well. CARE raised a concern about a
21 DWR letter. There are a couple of things about
22 the letter. First of all, it's not in evidence.
23 But, second of all, that letter is really an
24 exchange that is irrelevant to this licensing
25 proceeding.

1 DWR has the responsibility to insure
2 that the City's expenditures on this program are
3 reasonable. And that's what that exchange is
4 about. There's no question about what the design
5 of the SFERP is that is as we're proposing to you.
6 And what we're trying to do now is to justify that
7 to DWR. DWR is asking hard questions that it's
8 appropriate for them to do. We're trying to
9 answer those questions as best we can. And we're
10 hopeful that we will persuade DWR that these
11 components are cost effective.

12 But this is the project that we're
13 proposing to you. It's the project that we're
14 supporting before DWR. That DWR letter is really
15 something of a red herring.

16 CARE has also argued that the deferral
17 of identification of mitigation measures to deal
18 with the onsite contamination is not appropriate.
19 That issue has been addressed extensively in the
20 City's opening and reply briefs. I'm not going to
21 spend a lot of time on it now.

22 The bottomline is in the circumstances
23 of this case courts have held that the
24 identification of specific mitigation measures can
25 occur after the CEQA process.

1 What we've done here is we've worked
2 long and hard with members of the CEC Staff and
3 the Regional Water Quality Board to adequately
4 characterize the site. Our initial position was
5 that it was adequately characterized.

6 We ultimately responded to the comments
7 of the CEC and the Regional Water Quality Board
8 that additional investigation was required. We
9 undertook substantial additional investigation.
10 And as a result of that investigation the three
11 witnesses who addresses these topics agreed on
12 three key points.

13 The one is that the site was well
14 characterized, and the problem onsite was well
15 understood. The second is they all understood
16 which mitigation measures need to be considered to
17 address this problem.

18 And they all agreed that given the
19 nature of the contamination onsite, this suite of
20 mitigation measures would be effective to clean up
21 the problem.

22 Finally, we've all agreed on a health-
23 based standard that's enforceable both by the CEC
24 and by the Regional Water Quality Board, so we
25 have a lot of protections in this case.

1 CARE has made an argument about
2 inappropriate piecemealing. And, frankly, I don't
3 think that argument is apt in this case. That
4 argument might have some -- the question with that
5 argument would be whether the mitigation measures,
6 themselves, are going to create environmental
7 impacts that we haven't considered. But we know
8 what the mitigation measures are. There's been no
9 suggestion that they're going to create
10 environmental problem in and of themselves that
11 aren't addressed by the very substantial
12 conditions of certification. And so there isn't a
13 piecemealing problem here.

14 We've talked about what the mitigation
15 measures are. We've discussed them; people
16 understand what their impacts are. So, it's all
17 been analyzed. The only thing left to do is to
18 decide specifically which one of those measures
19 we're going to use. But we know what they are and
20 we've considered what their impacts can be.

21 Two more topics I'm going to address
22 hopefully briefly. One is Mr. Sarvey has raised a
23 number of concerns that the PM10 mitigation
24 measures that we're proposing are going to be
25 ineffective.

1 The first argument that Mr. Sarvey makes
2 is that the street-sweeping is not going to
3 achieve the savings that we've calculated they
4 will achieve. And he bases this on an ARB report.

5 The first thing I'd like to say about
6 that argument is that we think that argument was
7 made too late. If Mr. Sarvey was going to
8 introduce evidence like that from the ARB report,
9 that report existed at the time of the evidentiary
10 hearings, and we think he should have brought it
11 up then when our witness could address it.

12 But having said, because we are very
13 concerned about making sure that our measures will
14 work, I went back and asked our consultants, so,
15 what about this? And the reality is that that
16 report really talks about the incremental benefit
17 of using rule-compliant equipment, rule-compliant
18 street sweepers versus regular street sweepers.

19 But the main benefit of the street
20 sweepers is that we're going to be, you know,
21 sweeping the streets in a location; the streets
22 that we've identified; and the middle of the
23 street where they're not typically swept. And at
24 a frequency that's going to result in substantial
25 reductions in particulates.

1 So that's the main benefit which is not
2 discussed in the ARB, the report. The ARB report
3 only talks about the incremental benefit of using
4 the rule-compliant equipment.

5 It made me question, well, why do we
6 need rule-compliant equipment then if the benefit
7 is so small. But the consultants explained to me
8 that there are other benefits to using rule-
9 compliance equipment. It really is a program to
10 make sure that you're using equipment that's well
11 maintained.

12 And so it's an important additional
13 benefit. But the main benefit is the street
14 sweepers, themselves, which that report doesn't
15 take into account, and doesn't attempt to
16 quantify.

17 Mr. Sarvey has also attempted to use
18 evidence from the Los Esteros case to question the
19 accuracy of the PM10 benefits calculation. Again,
20 this argument relies on facts that are not in
21 evidence. If Mr. Sarvey had those concerns, he
22 could have brought them up at the time of the
23 evidentiary hearings. He didn't. And we think
24 it's too late.

25 But the important thing about the Los

1 Esteros case anyway is that that related to
2 fireplace replacement program. We're not talking
3 about a fireplace replacement program here, we're
4 talking about street sweepers for the one
5 component that does include some fireplace
6 replacement, we have the purchase of SOx ERCs as a
7 backup, which Mr. Sarvey doesn't agree with
8 either.

9 I think if there is a concern about the
10 accuracy of the savings from fireplaces, the SOx
11 ERC backup becomes all the more important. And
12 so, we just don't think that argument is
13 persuasive for changing the proposed decision.

14 And then the final point I'd like to
15 address, Mr. Sarvey argues that either the
16 TransBay project or an alternative that has four
17 units at the airport would be superior.

18 Well, as I began in my talk about the
19 bottomline about those alternatives is they're not
20 inCity generation, and so they don't provide for
21 eliminating the reliability need for Potrero. And
22 the fact that there might be some additional
23 things that need to be done to eliminate the
24 reliability need for Potrero doesn't take away
25 from the fact that the ISO has made it very clear

1 to the City over years, which is that you need
2 inCity generation.

3 The City has kicked and screamed about
4 that requirement for a long time. But that's what
5 the ISO has stated and, you know, the TransBay
6 cable or four units at the airport don't meet that
7 requirement. So it just doesn't meet the City's
8 key objective here.

9 So, in conclusion, we strongly support
10 the PMPD except for the analysis on environmental
11 justice. We would like to see the analysis on
12 environmental justice changed to reflect the
13 importance of the plant as a part of the program
14 to eliminate the reliability need for Potrero and
15 achieve its closure.

16 But other than that we think that
17 there's some clarification and some minor changes,
18 and with those that are set out in our written
19 comments, we think that the PMPD should be
20 recommended to the full Commission.

21 HEARING OFFICER FAY: Thank you, Ms.
22 Sol,. What I'd like to do is because the burden
23 of proof is on the applicant, give the applicant a
24 very brief opportunity, which they need not take
25 advantage of, to make rebuttal or clarification to

1 any of the comments that the other parties make.

2 That may seem like an unfair advantage,
3 but the applicant bears what one might call an
4 unfair burden in having to actually prove up the
5 case. Other parties only need to raise doubts.

6 So now we'll move to the staff's
7 comments. We have the staff comments. They're
8 quite clear. Is there anything further that the
9 staff wanted to add?

10 MR. RATLIFF: No. Staff thought the
11 decision was complete and comprehensive. And we
12 were generally happy with the decision.

13 We gave our comments in writing, and
14 they are errata-type comments. We note that there
15 was one particular condition that the language for
16 our condition of certification varied from that of
17 the applicant. And we thought we might address
18 that directly today, because we want to make sure
19 we get it right.

20 That is condition waste-2 on page 170-
21 171. And Dr. Alvin Greenberg is here to explain
22 what staff thinks that language -- how it should
23 read.

24 DR. GREENBERG: Hearing Officer Fay,
25 Commissioner Boyd, there's just some minor

1 disagreement on clearing up the language in COC
2 waste-2. Clearly the applicant and staff agree
3 that it should refer to -- the condition of
4 certification should refer to obtaining or giving
5 information and obtaining approval from the
6 Regional Water Quality Control Board when it comes
7 to any site conditions discovered by the
8 registered geologist or engineer, any surprises on
9 hazardous waste that may be encountered or
10 discovered.

11 So we're in agreement the language
12 should be changed to reflect that. However, when
13 it comes to jurisdiction from a state agency over
14 hazardous waste that would inadvertently or
15 surprisingly be found on the linears, the Regional
16 Board does not have jurisdiction, but rather the
17 Department of Toxic Substances Control would.

18 So the language that I have proposed
19 makes that delineation and the City may or may not
20 agree with me on that.

21 MS. SOL : Your Honor.

22 HEARING OFFICER FAY: Yes.

23 MS. SOL : The City agrees with Dr.

24 Alvin. We did not have the benefit of his
25 proposal when we wrote our own. We thought the

1 important point was that if hazardous waste is
2 discovered on the site, jurisdiction is with the
3 Regional Water Quality Board. But we were okay
4 with changes that he proposed.

5 HEARING OFFICER FAY: So the distinction
6 is onsite/offsite?

7 DR. GREENBERG: That is correct, Hearing
8 Officer Fay.

9 MS. SOL : I'm sorry, I should have
10 mentioned that in my opening comments.

11 HEARING OFFICER FAY: So, Ms. Sol,, as
12 far as you're concerned if we use the staff's
13 recommendation instead of applicant's that would
14 be fine on that point?

15 MS. SOL : That would be fine.

16 HEARING OFFICER FAY: Okay.

17 MR. RATLIFF: Dr. Greenberg has an
18 additional comment regarding the hazmat
19 conditions. I think a point raised by Mr. Sarvey
20 previously was the need for sensors of some kind,
21 ammonia sensors, that they be operated -- that
22 they be, I guess, fool-proof in their operation.
23 And I think Dr. Greenberg will address that point
24 further.

25 DR. GREENBERG: This is something that I

1 totally forgot about. The hearing transcript will
2 reflect that Mr. Sarvey brought up the issue of
3 insuring that there is an uninterruptible power
4 supply -- we referred to that as a UPS -- for the
5 ammonia sensors that are planned to be located
6 around the aqueous ammonia storage to make a
7 transfer pad.

8 The record will reflect that I thought
9 that that was a reasonable request and that I
10 would look into it. I did look into it, and I
11 forgot to bring it up to the Committee and the
12 PMPD. And so I'm doing so now.

13 I have discussed this with the
14 applicant; and the applicant is not opposed to
15 having a condition, or adding some words to an
16 existing condition of certification that would
17 require what the City is already planning on
18 doing. And that is having a UPS for the ammonia
19 sensors.

20 So if the Committee would like to
21 entertain some wording I do have some suggestions.

22 HEARING OFFICER FAY: What condition of
23 certification would it modify?

24 DR. GREENBERG: I would propose that we
25 modify proposed haz-4, as that discusses the

1 aqueous ammonia storage facility design.

2 HEARING OFFICER FAY: Okay. Do you have
3 some language you can provide us, or do you need
4 to submit that?

5 DR. GREENBERG: Oh, I can read that
6 right now.

7 HEARING OFFICER FAY: Okay, what page is
8 that found on --

9 DR. GREENBERG: I'd be looking at page
10 157; it would be the top paragraph on page 157 of
11 the PMPD. And because it is, the condition of
12 certification is separated by the page-break, so
13 the condition starts on the bottom of 156. But at
14 the top of 157 a new sentence before verification
15 is what I would propose. And it would simply:

16 Ammonia sensors shall be installed and
17 operated in the area of the storage tank and
18 transfer pad. These sensors shall be equipped
19 with an uninterruptible power supply (UPS)."

20 HEARING OFFICER FAY: Can you provide us
21 and the docket with copies of that recommendation?

22 DR. GREENBERG: Absolutely.

23 HEARING OFFICER FAY: Okay.

24 DR. GREENBERG: I would also add a few
25 words to the verification.

1 HEARING OFFICER FAY: All right.

2 DR. GREENBERG: Reading the
3 verification, if you look at the third line of
4 verification, starts with the word specifications.
5 So it would be: Specifications for the ammonia
6 storage tank, secondary containment basin," I
7 would strike the word and, so that it would read:
8 ...secondary containment basin, ammonia sensors,
9 and the UPS for the sensors," and then continue
10 reading as written to the CPM for review and
11 approval.

12 That way this is included in the design
13 specifications for the ammonia storage tank and
14 transfer pad. And we would see those design
15 specifications along with the UPS supply design.

16 HEARING OFFICER FAY: And that's
17 acceptable to the applicant?

18 MS. SOL : Yes, Your Honor.

19 HEARING OFFICER FAY: Dr. Greenberg,
20 just very briefly, what is the added benefit of
21 this change?

22 DR. GREENBERG: Hearing Officer Fay, the
23 added benefit really is just memorializing and
24 writing and putting in a condition of
25 certification what is standard practice in the

1 industry.

2 It is something that, you know, these
3 sensors have uninterruptible power supplies,
4 backup supplies at the power plants. Sometimes in
5 power plant siting cases we even ask that they --
6 or require, rather that they have hand-held
7 devices, which, of course, are operated on
8 batteries. And therefore have an uninterruptible
9 power supply.

10 These sensors that we're talking about
11 are hardwired. And it is good to have a backup
12 supply. This just really makes is very clear that
13 they will have to have that, even though that's
14 what they would have anyway.

15 HEARING OFFICER FAY: So is this the
16 kind of thing we look forward to seeing in the
17 future in all the verifications in conditions
18 regarding hazardous materials and ammonia?

19 DR. GREENBERG: Sir, you probably will.
20 That's not my decision. That would be
21 management's decision. But certainly --

22 HEARING OFFICER FAY: But you said it is
23 a standard practice, so I just wanted to confirm
24 that.

25 DR. GREENBERG: Yes, it is. And whether

1 or not it shows up in every CEC siting case as a
2 recommendation for a condition of certification is
3 something that I can't make the decision on.

4 HEARING OFFICER FAY: Well, thank you.

5 DR. GREENBERG: Thank you.

6 HEARING OFFICER FAY: And, Mr. Sarvey,
7 obviously staff is responding, at least now and
8 again.

9 Mr. Ratliff, is there anything further
10 from the staff?

11 MR. RATLIFF: No.

12 HEARING OFFICER FAY: Okay. Now we'll
13 turn to Mr. Sarvey.

14 MR. SARVEY: Thank you, Mr. Fay. I
15 first wanted to discuss the southern waterfront
16 EIR. I don't want to spend a lot of time with it,
17 but I do believe that the Committee should
18 reinstate the administrative notice of the
19 document.

20 And I say that because although staff
21 has said that they did not have a copy of the
22 southern waterfront EIR, the record demonstrates
23 that, in fact, they did.

24 The southern waterfront EIR was used in
25 exhibit 46 on page 5-2, 4.5-7.8, 4.10-13, 4.8-9,

1 4.12-13 and 4.3-29. So the document, itself, was
2 actually a cornerstone of staff's analysis and I
3 believe that the Committee should take
4 administrative notice of it and reinstate that.

5 Ms. Sol, mentioned a document number
6 37668, which the parties have not received.
7 Apparently there's some dispute between CARE and
8 the applicant on that. So I would like to have
9 that document distributed to the parties so at
10 least we were aware of what the contents of that
11 document were. I note that Mr. Boyd did indicate
12 that there was some information in there related
13 to reliability that I think might be important.

14 HEARING OFFICER FAY: Let's stop for a
15 minute. Can you identify that a little more
16 clearly?

17 MR. SARVEY: It's docket 37668, docketed
18 8/14/2006, California Department of Water
19 Resources, T. Jaines, to SFPUC Barbara Hale. And
20 it's entitled, San Francisco Public Utilities'
21 response to DWR questions. And it's 79 pages.

22 I have yet to see the document.

23 HEARING OFFICER FAY: Ms. Sol,, any
24 response?

25 MS. SOL : Yes, Your Honor. The

1 document that was docketed, and it was not, to my
2 knowledge, and I was surprised to see it show up
3 in this proceeding because it's not relevant, but
4 what I saw docketed and distributed was a letter
5 from DWR indicating receipt of a letter from the
6 City to DWR explaining some of the rationale for,
7 or justifying some of the costs of some components
8 of the project.

9 CARE represented that that letter to DWR
10 was docketed. It was not -- the City saw no
11 reason to submit that into this proceeding. The
12 City is a public entity, and if Mr. Sarvey asked
13 me for a copy of the letter, we have a Freedom of
14 Information requirement and I will make a copy
15 available to him.

16 But I'm not inclined to file that in
17 this proceeding because I don't view it as
18 relevant.

19 HEARING OFFICER FAY: And Mr. Boyd was
20 the one who at least distributed it in some
21 limited way, is that correct? I believe I
22 received a copy of it.

23 MS. SOL : I do not know who filed the
24 response from DWR to the City in this proceeding.
25 It was not the City. I don't know who filed that.

1 That was a one-page document.

2 I believe from Mr. Boyd's pleading that
3 he then followed up with the CEC and asked for the
4 letter that that letter was responding to. And I
5 guess I'm surprised that it was given to the CEC.
6 But perhaps it was copied to the CEC because there
7 was somebody that the CEC, that Karen was talking
8 to, and so it was copied to the CEC.

9 Again, we're a public entity and I will
10 provide copies of that letter to whomever asks for
11 it, but it was not docketed; it was never my
12 intent to docket it. And I frankly don't
13 understand who or why the response from DWR to the
14 City was docketed, either.

15 HEARING OFFICER FAY: Well, Mr. Sarvey,
16 the relevance hasn't been established of the
17 letter. I don't think we're going to order any
18 additional effort at this time. If you want to
19 get a copy of it and attach it to some comment
20 that you want to submit --

21 MR. SARVEY: I can request it from
22 dockets, and if there's pertinent information
23 there I'll take it up under reconsideration.

24 HEARING OFFICER FAY: Um-hum.

25 MR. SARVEY: My second comment was the

1 applicant is trying to reframe the PMPD here as
2 far as the Committee's description of the
3 environmental justice. And I think that that
4 should be rejected. I simply would just quote one
5 sentence in the decision that says: Overall, as
6 noted by Intervenor Sarvey, the evidence in the
7 record simply does not persuade us that generation
8 at the Potrero site will necessarily cease as a
9 result of the SFERP."

10 And I don't think there's anything that
11 anyone could say that's going to change that.
12 It's throughout the record, so I think that the
13 Committee was correct in making that
14 determination.

15 And maybe Ms. Sol, would like to respond
16 to that.

17 HEARING OFFICER FAY: Well, she doesn't
18 necessarily need to.

19 MR. SARVEY: Okay.

20 HEARING OFFICER FAY: We've heard her
21 position.

22 MR. SARVEY: Okay, thank you. And I
23 wanted to talk about the air quality mitigation
24 and the street sweeping. And I'm glad to see that
25 the applicant agrees that the benefit of the

1 street sweeping program is very little over what
2 would be with a normal street sweeper.

3 I calculate it as 178 pounds from the
4 ARB document that was referenced by Ms. Sol,. And
5 then I also included, and I would admit that it
6 was not in evidence, but I think with the
7 importance of the mitigation here that the 178
8 pounds as opposed to 26 tons that we're trying to
9 protect the community here, I think that should be
10 investigated further. And that the Committee
11 should make a change there.

12 And I also disagree, and I'll say that
13 again, that the SOx mitigation in AQSC-12 is
14 certainly not going to mitigate any local impacts
15 from this project. It's a regional program; it's
16 designed to balance the emissions from new sources
17 that are being sited, so that the region doesn't
18 deteriorate.

19 In this particular case we don't have a
20 SOx issue, so I don't see how SOx are any benefit
21 at all. There's no exceedances of the SO2
22 standards; none contemplated. So, I stick to my
23 opinion that the SOx mitigation is not going to
24 offer this community anything.

25 I do believe that the wood stove program

1 that Mr. Ngo has outlined in his testimony is
2 definitely the way to go. There was a comment
3 about Los Esteros and the exaggeration of 1900
4 tons achieved under that particular wood stove
5 program.

6 But, in fact, with \$550,000 both staff
7 and the Bay Area Air Quality Management District
8 identified six tons of reductions, which is --
9 that's more than what we're asking from the
10 applicant here.

11 So, again, I believe that we need to
12 quantify ASQC-11; provide a monetary amount and a
13 target. And drop ASQC-12 because the SOx
14 mitigation, granted it may be a regional issue and
15 it may help the regional situation, but as I said,
16 there's no Sox exceedances. And I don't see how
17 it benefits this community in any way.

18 Finally, with the nitrogen deposition,
19 the applicant has asserted that their
20 participation in the NOx program with the Bay Area
21 Air Quality Management District is going to
22 somehow offset their contribution to San Bruno
23 Mountain.

24 Well, the truth is San Bruno Mountain,
25 with or without Potrero, with or without Hunter's

1 Point, it has been determined that there will be
2 an impact from the SFERP and that should be
3 mitigated.

4 Now, 75 percent of this nitrogen
5 depositions from ammonia. So I don't understand
6 how any type of NOx program is going to mitigate
7 these ammonia emissions which there's no
8 mitigation offered for at all.

9 And it's ironic that, Mr. Fay, we're
10 dealing with the same issue in Los Esteros. And
11 my position's the same there.

12 So, essentially you've got nitrogen
13 deposition on San Bruno Mountain, also in the Los
14 Esteros project, where no mitigation is provided
15 for any of the ammonia deposition -- I mean the
16 nitrogen emissions, and deposition from ammonia.
17 And in both cases, both Potrero and the Los
18 Esteros project, were using the exact same 1985
19 ERC from the Potrero Power Plant to mitigate, sole
20 mitigation for the nitrogen deposition on both
21 these cases.

22 If you look at the record, and I'm not
23 going to quote the Los Esteros record, it's not
24 relevant here, but if you look at the record here
25 they determined what the nitrogen deposition

1 levels were, and they used the figures from 1987
2 to 1993.

3 And these emission reductions had
4 already occurred in 1985. So they're not even in
5 the background of this nitrogen deposition. So,
6 essentially these 1985 ERCs are worthless. Thank
7 you.

8 HEARING OFFICER FAY: Okay, thank you,
9 Mr. Sarvey. And, again, do we have any
10 representative of CARE here? Okay.

11 Since the Neighborhood Associations are
12 a party, I'd like to call on them now for any
13 comments. And we also have cards that we will get
14 to for public comment. Mr. Boss represents one of
15 the intervenors.

16 MR. BOSS: Yes. Joe Boss, Potrero
17 Boosters and Dogpatch Neighborhood Associations.

18 While I do truly appreciate all the hard
19 work that Mr. Sarvey and CARE have done, we have,
20 as a community, looked at this very closely. Our
21 education was based on Mirant's application for
22 certification for unit 7.

23 And a lot of the offsets and cures and
24 so forth that are being discussed here were
25 offered at the time Mirant's project was

1 undergoing its review.

2 In the case of wood burning, we
3 extensively looked at that. And whether it was
4 Neighborhood Associations or meetings that were
5 undertaken, with the community asking for a show
6 of hands of those who burned wood, either in a
7 stove or a fireplace, we couldn't come up with 1
8 percent of the people.

9 So, while it would work, I think, in a
10 colder climate where there is wood burning going
11 on, it's just fairly minimal in the affected
12 neighborhood.

13 I'm not really as enamored with the
14 street sweeping as I would be if we could go to
15 mobile sources and try to do something about the
16 freeways and the fugitive dust that's coming off
17 those in our neighborhoods. But we can't do that.

18 So, this is not a perfect world. We've
19 really felt that this is such an integral part of
20 a bigger process, to get rid of Mirant's old unit
21 3. Early in that process we had suggested that
22 perhaps they scrap that whole idea and build a 320
23 megawatt power plant, air cooled. Mirant decided
24 that we didn't really know what we were talking
25 about. And perhaps we would not be meeting today

1 if we had a clean 320 megawatt power plant
2 replacing the existing Mirant site.

3 So, we proceeded working very hard with
4 the City for their energy plan. And a key
5 component of trying to come up with green energy,
6 interruptible by the sun going down, or the wind
7 not blowing, was to make sure that there was in-
8 town generation stabilizing the system, et cetera,
9 et cetera, et cetera.

10 So, I don't think anyone in the
11 community jumps up and down with joy over the idea
12 of a gas fired generation system. That this is
13 flexible, it's scalable, it's probably the most
14 efficient way to get us to the next step. Which
15 is the removal of the reliability-must run
16 contract. That is where we will see a giant
17 reduction in the pollutants that we're talking
18 about here, including ammonia.

19 So that's basically our conclusions.
20 Thank you.

21 HEARING OFFICER FAY: Thank you. Thank
22 you for your comments.

23 Ms. Sol,, before we ask for public
24 comments, did you want to respond to anything that
25 was said previously?

1 MS. SOL : I'll just respond to two
2 points briefly. The first regarding the SOx
3 offsets. To start off, the City's primary program
4 to address particulates is the street sweeping.

5 The fireplace replacement and SOx
6 offsets we agreed to work with staff on because
7 staff was concerned that in addition to mitigating
8 particulates generally, we should focus on PM2.5.
9 And so we agreed to do that.

10 But we shouldn't lose sight of the fact
11 that the street sweeping program already mitigates
12 particulates one and a half times.

13 The second thing is, you know, Mr. Boss
14 said it, if we were confident that we could do
15 this with fireplace replacements that would be one
16 thing, but we're not. And we've tried to make the
17 SOx approach a little bit more palatable by
18 agreeing to have those ERCs be local.

19 So, we're trying to address the problem.
20 And certainly the street sweeping is something
21 that will address particulates at the level and of
22 a nature that are particularly adverse to human
23 health.

24 With regards to the ammonia deposition -
25 - sorry, the nitrogen deposition, I think it's

1 important to note that the ammonia effects of SCR,
2 both at Potrero and as the SFERP, are included in
3 the analysis of the reductions.

4 Again, we're looking at a cumulative
5 program. And a cumulative impact and a cumulative
6 program and a regional program to address that.
7 And the bottomline is that even though in order to
8 reduce the NOx significantly we're using
9 strategies such as SCR that have a downside of
10 creating ammonia, the reductions in NOx are so
11 substantial that they way out-weigh the increases
12 in nitrogen deposition from ammonia.

13 So the bottomline again is that the
14 program is working, both in the case of the SFERP
15 and more broadly.

16 And those were the two responses that I
17 had to Mr. Sarvey. I think I had addressed most
18 of his questions. I do not agree that we should
19 maintain the current EJ analysis of the PMPD. The
20 bottomline for us is that even if somebody comes
21 in off the street and proposes a power plant in
22 that neighborhood that has no significant impacts,
23 if that power plant doesn't do anything to close
24 down Potrero, then that power plant is not
25 something that the City would support. And that's

1 the basis of our comments here.

2 HEARING OFFICER FAY: Okay, thank you.

3 All right, now we'd like to take comments from the
4 public. And I'm just going to go through the
5 order that I have the cards, unless you folks have
6 something else in mind.

7 The first one is Espanola Jackson.

8 MS. JACKSON: Thank you very much. My
9 name is Espanola Jackson and I've lived in Bay
10 View/Hunter's Point since 1948. I would like to
11 give you a little background on PUC in San
12 Francisco.

13 Number one, we didn't have a PUC until
14 the late '90s. And that was when Mayor Frank
15 Jordan put together -- separated and made PUC and
16 DPW doing another work. It was all under
17 Department of Public Works. That was the sewage
18 plant there.

19 I must say to you today I brought you a
20 report that was done just last week talking about
21 the health of my community, which is Bay View/
22 Hunter's Point. But you heard your staff and
23 everyone and PUC talking about Potrero Hill. Let
24 me say this to you, where they're talking about
25 putting those CTs, it is not in Potrero Hill.

1 It's not even close to Potrero Hill.

2 It was not until the late '90s when --
3 the early '90s when we start marching and trying
4 to close down PG&E. PUC didn't have anything to
5 do with that. It was those of us in the community
6 because of the fact our people was getting sick
7 and dying, and still are dying in Bay View/
8 Hunter's Point, from all the toxins that we have.

9 If you go to the site where they're
10 talking about putting the CTs, it's landfill. And
11 all you have to do is just look right across and
12 you see the public housing projects which is Bay
13 View/Hunter's Point.

14 Now, the plant is going to be like off
15 of 24th. The end there is Army Street. That's
16 Bay View/Hunter's Point. But you have someone to
17 talk about a thin line. When those stacks start
18 smoking it's going to come right over there to
19 those of us that live in Bay View/Hunter's Point.
20 It's not going to Potrero Hill.

21 Now, when these committees was set up,
22 we in Bay View/Hunter's Point did not accept the
23 City accepting those CTs. They didn't come to Bay
24 View/Hunter's Point and ask us what did we think.
25 They thought because of the fact PG&E plant was

1 closing that they could put the CTs in Potrero
2 Hill. We said no way. Well, how you going to
3 take it out of our backyard and put it in the
4 front yard.

5 I am ashamed of what the City is still
6 trying to do and not giving you the information.
7 They have not been no involvement in the justice
8 to deal with us in Bay View/Hunter's Point.

9 I would like to say another thing.
10 Those CTs was given to San Francisco year 2000.
11 Here it is year 2006. Do they meet EPA standards?
12 I have no idea. And I hear the young lady says
13 that the trucks or whatever going to be working
14 there is if they over three years old they don't
15 want them. Well, why do you think we want to have
16 the CTs at Bay View/Hunter's Point. They more
17 than three years old.

18 Thank you very much.

19 HEARING OFFICER FAY: Thank you, Ms.
20 Jackson.

21 And now Dorothy Peterson.

22 MS. PETERSON: Good afternoon; my name
23 is Dorothy Peterson, and I'm the President of the
24 Shoreview Residents Association, Incorporated. I
25 represent 604 heads of households on Hunter's

1 Point Hill. There are over 2400 residents in the
2 four properties that I represent.

3 And I'm surprised to say that I don't
4 think anyone understands the definition of
5 environmental justice. Because if you did, we
6 wouldn't be having this discussion.

7 We also put on a wellness expo and have
8 been for the last ten years. It came about as a
9 result of the disparities in health of the
10 residents of those four properties, and it spread
11 to the southeast sector.

12 Please consider the definition of
13 environmental justice, not just us. Thank you.

14 HEARING OFFICER FAY: Thank you, Ms.
15 Peterson. Jose Gonzalves.

16 MR. GONZALVES: Good afternoon,
17 Commissioners. My name is Jose Rene Gonzalves.
18 And I'm an ordained minister; I represent Alpha
19 and Omega Evangelistic Ministry. I also am a
20 homeowner in Sacramento. I live in Bay View/
21 Hunter's Point -- I'm sorry, San Francisco; I live
22 in Bay View/Hunter's Point also, not very far from
23 where PG&E old power plant was.

24 I don't know if you've had an
25 opportunity to read the report that Ms. Jackson

1 passed on to you, if you have it in front of you.
2 You know, this article talks about residents of
3 Bay View/Hunter's Point being so sick. The
4 children suffering with asthma and leukemia and
5 everything else you can think of. There is
6 diabetes in the neighborhood. Seniors are
7 affected dramatically by some of the pollution
8 that we have.

9 The shipyard was the main blame for some
10 of the diseases that we see today. However, the
11 PG&E power plant played a big part in the health
12 of the community. Some of the toxins that spewed
13 from that plant, which is still there today, have
14 killed many people in Bay View/Hunter's Point. We
15 know this to be a fact.

16 Some of you hear these things and say,
17 how can you prove it. Well, PG&E knows this;
18 they've had reports. They have not, to this day,
19 accepted the responsibility or partial
20 responsibility for some of the diseases that they
21 have spread or helped to spread.

22 So, knowing that Bay View/Hunter's Point
23 has all these health problems I don't understand
24 how it is humanly possible for anyone to recommend
25 these CTs be placed there so close to where

1 there's already a major health problem.

2 No one, the Navy, has never, has ever
3 taken responsibility. They have always said we're
4 not responsible. Well, we know that parts of the
5 nuclear bombs, the atomic bombs that was dropped
6 on Hiroshima and Nagasaki, part of those bombs
7 were built in San Francisco at that shipyard.
8 They used those ships to ship those bombs
9 overseas.

10 We know that they cleaned the ships on
11 the return trip. They scraped them, sandblasted
12 them and it went right into the water, into the
13 Bay. All that waterway along the southeast sector
14 of San Francisco, from Pier probably 40 on back,
15 to where Candlestick Park is, all of that is
16 landfill. And we know that when the ground moves
17 and when the water come in, the tides come in, we
18 know that there's always movement. I've gone
19 there; I've taken pictures; I've seen the green
20 and the yellow colors. It looks like a rainbow
21 out there.

22 And now you want to put a power plant
23 right there again, so close to where all of this
24 problem. Anybody that lives in Bay View/Hunter's
25 Point or has ever been there can tell you that

1 that is a major wind tunnel. We have tremendous
2 air blowing through that area. Air blows all
3 over. Seniors are there; kids are there. Kids
4 pick up everything from the ground.

5 So, we know that they take those things
6 that they pick up on their clothes, they play on
7 the ground, they take it into their homes. Their
8 mothers wash their clothes together with the other
9 kids' clothes, with the father's clothes. And
10 that contamination is there in the washer.
11 Everything gets contaminated together. It's on
12 the rugs and the carpet.

13 So now you're going to put a plant that
14 no one knows what dangers it's going to bring to
15 the community. What stuff is going to leak in the
16 air. You say, oh, no, that's been tested and
17 proved it won't do this and that. But just like
18 you were saying about the trucks being, if they're
19 over six years old or three years old, they can't
20 be used.

21 Well, like Ms. Jackson say, those CTS
22 have been parked in Texas. They been in a yard in
23 Texas, and we found that out, since they were
24 first purchased. So they outdated, too, as Ms.
25 Jackson say.

1 And the other thing was, you know, I
2 found kind of funny, some of the work that's going
3 to be done, if the trucks are old they can't be
4 used, so that means that that person won't get the
5 contract. I don't know of any black person in Bay
6 View/Hunter's Point that has a brand new truck, or
7 a brand new diesel, what you call it, backloader,
8 back -- locomotive, whatever. Because they're not
9 getting the job that you promised.

10 Light rail came through. We was told,
11 oh, yeah, you're going to get jobs. Boom,
12 everybody was going to get jobs, on-the-job
13 training. How many black people did you ever see
14 with those jobs? We live right near there. We do
15 up and down every day. Five black people we saw
16 working the whole project, five. You know what
17 they was doing? Holding up a stop sign. That's
18 the job that you gave them. That's the jobs that
19 you provided for our community.

20 Then you say we going to give you a
21 training program. Black people in Bay View/
22 Hunter's Point have been trained to death. We've
23 been through every kind of training program there
24 could be. You name the training program, we have
25 been there.

1 So now what are you going to do? Train
2 us again. Train us to what? To kill some more of
3 our people. Please do not consider this. I am
4 opposed to it. And most of the community is.

5 Thank you very much.

6 HEARING OFFICER FAY: Thank you, sir.
7 Our final comment is from Francisco DaCosta.

8 MR. DaCOSTA: Commissioners, my name is
9 Francisco DaCosta. I've had the opportunity to
10 address you a couple of times. I'm the Director
11 of Environmental Justice Advocacy. And I also
12 represent the first people of San Francisco, the
13 Muwekma Ohlone on infrastructure issues and base
14 closure issues.

15 Commissioners, what you've heard today
16 is a lot of disinformation from the San Francisco
17 Public Utilities Commission. Ms. Espanola Jackson
18 gave you some history of when this agency came
19 about.

20 This agency does not represent the
21 constituents of San Francisco. We are some
22 780,000 strong. Does not represent the
23 constituents of San Francisco. This agency has a
24 track record of polluting. This agency has a
25 track record of discrimination. It's very well

1 known.

2 But I'm here to bring to your attention
3 a few of the issues that the SFPUC wants to
4 hoodwink the constituents. If we look at this
5 particulates from this three CTs, very dangerous
6 particulates. The SFPUC has not once mentioned
7 that on the Illinois Street, which is a few
8 hundred feet away from the CTs, there'll be a
9 thoroughfare that millions and millions of
10 vehicles will be.

11 So the SFPUC can come up with a
12 convoluted means of having some street sweeping
13 program. But in reality millions and millions of
14 people unknowingly will be exposed to this
15 particulates. And take the particulates not only
16 into their system, but all over the place,
17 including home.

18 So, the site, as you very well know,
19 Commissioners, and you all agreed to in the
20 beginning, is port property. You know that port
21 property comes under the Public Trust Act. And
22 the port property comes under the Burton Act. And
23 you very well know that whatever in the year 2006,
24 if we are intelligent and we call ourselves homo
25 sapiens, and if we follow the mandates of the Port

1 Authority, that whatever facilities are built
2 there should be on maritime uses. And what does
3 the SFPUC want to do? Contribute again in the
4 year 2006 to pollution.

5 You have heard some vested interests
6 come over here and tell you that they are some
7 sort of intervenors. How can one really be a true
8 intervenor when one participated in choosing this
9 site? Is that not a conflict of interest?

10 Commissioners, we have about maybe 98
11 percent of the folks representing SFPUC here that
12 do not live in San Francisco. That have no idea
13 what had been before, and have not participated in
14 the trials and tribulations of the constituents
15 that live closer to this proposed CTs or what you
16 call combustion turbines.

17 Commissioners, for a long time I made it
18 a point to attend the San Francisco Public
19 Utilities Commission meetings. And pay attention.
20 This folks are so funny it's unbelievable. They
21 just make up their minds to do things. Just make
22 up their minds to do things. And then when the
23 serious questions are asked, they fall back again,
24 and again, and again.

25 The SFPUC, Commissioners, I state once

1 again, they do not have the trust of the
2 constituents of San Francisco. They do not have
3 the trust of the constituents of San Francisco.

4 Commissioners, for the last 26 years I
5 have tried my best, using my experience that I got
6 in the Presidio where I ran the Presidio 1480
7 acres, 650 buildings, 1800 housing units, state of
8 the art communication center, water treatment
9 plant, you name it. I tried to use my experience
10 that I gained there to help the poor constituents
11 of Bay View.

12 And what I normally do as a Director of
13 Environmental Justice Advocacy is rely on
14 empirical data. Again and again and again the San
15 Francisco Public Utilities Commission, even if you
16 use the Freedom of Information Act, fail to give
17 you empirical data. I had to request them about
18 six times to give me empirical data about a sewage
19 treatment plant that is not very far from the
20 proposed CTs. Up until today they haven't given
21 me that data.

22 It is a known fact that the San
23 Francisco Public Utilities Commission has a old
24 treatment plant, a dual system that takes -- the
25 raw sewage with the rainwater. And this system

1 cannot adequately process what, Commissioners, and
2 most of the people in this room, call secondary
3 effluents, thereby polluting the Bay.

4 And now we have these CTs that are going
5 to adversely impact our children who already
6 dying. How many children of color have to die
7 before anybody does something, anybody has some
8 compassion? What you hear, Commissioners, time
9 and time again is some technical, convoluted,
10 legalese language that simple people, people that
11 work hard, really do not understand.

12 Commissioners, the San Francisco Public
13 Utilities Commission has not had one single focus
14 meeting on the combustion turbines. This whole
15 program is led by some sell-outs. People from
16 Potrero Hill who have formed their own task force;
17 they do not have the interests of the poor people.
18 They do not.

19 Now, Commissioners, once while the whole
20 Commission was having this meeting, I made it a
21 point, because I was in bed, to call you over the
22 telephone. And I spoke to you and I addressed
23 cumulative pollution. And what I'm stating about
24 cumulative pollution is in that area there are
25 about six or seven large projects, including the

1 Muni facility, wherein hundreds and hundreds of
2 people will be working.

3 And what does the San Francisco Public
4 Utilities Commission do? Within a few hundred
5 feet they bombard them with particulates. The
6 year 2006 this is simply uncalled for.

7 Commissioners, the southeast sector is
8 the last frontier. In other words, the southeast
9 sector is the last piece of land wherein you can
10 build buildings.

11 And what has happened is the San
12 Francisco Redevelopment Agency has declared a huge
13 area to build high-density buildings using eminent
14 domain and tax increment, and, of course, high-
15 density buildings, to get a lot of income.

16 The Mayor and the 49ers are planning to
17 build stadiums in the vicinity. What is happening
18 here is on one hand you are talking about having
19 some reliable energy source. And I participated
20 in the stakeholders meetings that you had; Cal-
21 ISO, we have PG&E, we had members of Mirant, some
22 members of the community speaking. We also had
23 SFPUC, but they would hardly ever speak out. But
24 they were constantly on the side suing PG&E,
25 trying to use convoluted methods to get to Mirant.

1 And at the same time, coming over here and to
2 other bodies and saying, oh, you know, we
3 represent San Franciscans. They do not.

4 What am I getting at? We cannot start
5 addressing any type of energy model when at the
6 same time you want to build thousands and
7 thousands of units.

8 I told you, Commissioners, I represent
9 the first people of San Francisco. Up till 1927
10 the Muwekma Ohlone were federally recognized. And
11 then illegally removed by a Bureau of Indian
12 Affairs agent, L.A. Darrington. We consider that
13 the land was stolen from us.

14 And what we state when we go before some
15 authorities, we try to impress them that mother
16 earth was given to us so that we could take care
17 of it. So that when we leave this earth we would
18 leave this earth a better place.

19 Commissioners, it is not right that the
20 SFPUC contribute to the pollution. That they
21 contribute to racism. That they contribute to
22 discrimination. And most of all, Commissioners,
23 that whenever they attend forums like this, panels
24 like this, that they are full of disinformation.

25 Thank you very much.

1 HEARING OFFICER FAY: Thank you, Mr.

2 DaCosta. Are there any other members of the
3 public who would like to address the Committee?

4 Okay. I think we've heard from all the
5 parties and members of the public. I'd just
6 remind you that October 3rd at 1:30 in the
7 afternoon in this room is when the full Commission
8 will consider whether or not to approve the
9 application for the SFERP.

10 Okay, thank you, all; we're adjourned.

11 (Whereupon, at 3:20 p.m., the Committee
12 Conference was adjourned.)

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CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter,
do hereby certify that I am a disinterested person
herein; that I recorded the foregoing California
Energy Commission Committee Conference; that it
was thereafter transcribed into typewriting.

I further certify that I am not of
counsel or attorney for any of the parties to said
conference, nor in any way interested in outcome
of said conference.

IN WITNESS WHEREOF, I have hereunto set
my hand this 1st day of October, 2006.

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